University of Washington, Decision 10490-B (PSRA, 2010)

STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

WASHINGTON FEDERATION OF STATE EMPLOYEES, Complainant, vs. UNIVERSITY OF WASHINGTON, Respondent.	CASE 21681-U-08-5529 DECISION 10490-B - PSRA FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

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On April 30, 2008, the Washington Federation of State Employees (union) filed a complaint charging unfair labor practices with the Public Employment Relations Commission. The union represents a bargaining unit of technical employees employed by the University of Washington (employer) that work at the Harborview Medical Center in Seattle, Washington. In its complaint, the union alleged that the employer refused to bargain and interfered with employee rights regarding the reclassification of certain employees in its bargaining unit; the Specimen Processing Technicians. On May 29, 2008, in response to the Commission's deficiency notice, the union filed an amended complaint which provided greater detail. Katrina Boedecker was assigned as examiner. On September 24, 2008, the union filed a second amended complaint alleging that the employer interfered with employee rights and refused to bargain through direct dealing with certain Specimen Processing Technicians. On October 10, 2008, Boedecker issued an amended preliminary ruling.

On December 11 and 12, 2008, and January 12, 2009, these matters were heard by the examiner and she issued a decision on July 31, 2009. On August 24, 2009, the union appealed the

examiner's decision. On June 30, 2010, the Commission vacated the examiner's decision and remanded the case to be written by another staff person, without reference to Boedecker's decision. Subsequently, the undersigned was assigned to write the remanded decision based solely upon the record.

ISSUES

1. Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) and refuse to bargain in violation of RCW 41.80.110(1)(e), by failing or refusing to meet and negotiate with the union concerning wages for Specimen Processing Technicians?

2. Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) and refuse to bargain with the union in violation of RCW 41.80.110(1)(e), by dealing directly with represented employees concerning the salary and classification of Specimen Processing Technicians?

I find that the employer did not interfere with employee rights or refuse to bargain in good faith when it did not agree to the union's proposal concerning the classification placement of certain members of the union's bargaining unit.

I also find that the employer did not interfere with employee rights or refuse to bargain in good faith when it met with some of the employees impacted by the dispute, and their legal counsel. The employer's conduct in that meeting did not constitute direct dealing or circumvention of the bargaining agent. The employer's representative at that meeting provided information, but did not bargain with or in any other way try to undermine the union's authority or responsibility to represent the members of its bargaining unit and their interests.

ISSUE 1 – Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) and refuse to bargain in violation of RCW 41.80.110(1)(e), by failing or refusing to meet and negotiate with the union concerning wages for Specimen Processing Technicians?

APPLICABLE LEGAL STANDARD

In *King County*, Decision 10547-A (PECB, 2010), the Commission reiterated the long standing standard that an employer covered by the Public Employees' Collective Bargaining Act, Chapter 41.56 RCW, has a duty to bargain with the exclusive bargaining representative of its employees. This standard has also been applied to state employees with the passage of RCW 41.80. *Community College District 7 (Shoreline Community College)*, Decision 9094 (PSRA, 2005). As stated in RCW 41.80.020 that duty includes "wages, hours, and other terms and conditions of employment." Thus, the statute applies for the State of Washington, when it is acting as an employer, the standards earlier adopted by the Commission in *Federal Way School District*, Decision 232-A (EDUC, 1977), which cites *NLRB v. Borg-Warner Corp.*, 356 U.S. 342 (1958).

These statutory collective bargaining obligations require that the status quo be maintained regarding all mandatory subjects of bargaining, except where such changes are made in conformity with the statute or the terms of a collective bargaining agreement. *City of Yakima*, Decision 3501-A (PECB, 1998), *aff'd*, 117 Wn.2d 655 (1991); *Spokane County Fire District 8*, Decision 3661-A (PECB, 1991). An employer that fails or refuses to bargain in good faith on a mandatory subject of bargaining commits an unfair labor practice and violates RCW 41.80.110 (1)(a) and interferes with employee rights in violation of RCW 41.80.110(1)(a) .

As discussed in *King County*, Decision 10547-A, the bargaining obligation is applicable to a decision on a mandatory subject of bargaining and the effects of that decision, but will only be applicable to the effects of a managerial decision on a permissive subject of bargaining. *Skagit County*, Decision 6348 (PECB, 1998). In the *City of Kelso*, Decision 2120-A (PECB, 1985), for example, both the decision to contract out bargaining unit work and its effects on the employees were mandatory subjects of bargaining, while in the subsequent case, *City of Kelso*, Decision 2633-A (PECB, 1988), the decision to merge operation with another employer was an entrepreneurial decision, and only the effects of the employer's decision on employee wages, hours and working conditions were mandatory subjects of bargaining.

When subjects relate to both conditions of employment and managerial prerogatives, the Commission applies a balancing test on a case-by-case basis to determine whether an issue is a

mandatory subject of bargaining or a permissive subject of bargaining and therefore whether a duty to bargain arises. The inquiry focuses on which characteristic predominates. *International Association of Fire Fighters, Local 1052 v. PERC*, 113 Wn.2d 197, 200 (1989). While employer decisions concerning budgets and programs tend to fall into the "permissive" category, the impacts/effects of such decisions on employee wages, hours and working conditions are "mandatory" subjects of bargaining and thus a duty to bargain arises.

An employer violates RCW 41.80.110(1)(a) if it implements a unilateral change of a mandatory subject of bargaining without having fulfilled its bargaining obligations. As a general rule, an employer has an obligation to refrain from unilaterally changing terms or conditions of employment unless it: (1) gives notice to the union; (2) provides an opportunity for bargaining prior to making a final decision; (3) bargains in good faith, upon request; and (4) bargains to agreement or impasse concerning any mandatory subjects of bargaining. *Skagit County*, Decision 8746-A (PECB, 2006).

ANALYSIS

The employer operates two medical centers in Seattle: Harborview Medical Center, an acute care hospital and regional trauma center; and the University of Washington Medical Center, an acute care hospital and regional research facility. Operationally, the two facilities are somewhat separate, although both are administered by the University of Washington, both are affiliated with the University of Washington Medical School and both are staffed by employees covered by a university-wide classification system. For purposes of collective bargaining, the employer and the unions that represent its employees have been inconsistent in the boundaries of their respective bargaining units. Some bargaining units are defined by which medical center in which the employees work and some are described as "campus-wide." For example, in the collective bargaining agreement that includes the employee classification at issues here, the Specimen Processing Technicians, that classification is listed under the title of "Harborview Medical Center Bargaining Unit." But in the same contract another list of employee classifications is listed under the title of "Campus-wide Bargaining Unit," which presumably includes employees at both hospital facilities and elsewhere within this multi-campus university. Another indication of this dichotomy in the parties' collective bargaining agreement is in the

Layoff Units listed in Appendix II. Harborview Medical Center and the University of Washington Medical Center are listed as two separate units for purposes of layoff and recall.

The issues presented in this case have a long and somewhat convoluted history. The information contained in the following history older than six months prior to the filing of the complaint in this matter is only relevant as it explains the issue and the course of events. RCW 41.80.120(1).

- In 2003, the employer reclassified Specimen Processing Technicians at Harborview as Clinical Laboratory Technicians. This was done after a classification and compensation study was completed by the employer where a determination was made that the work performed by the Specimen Processing had changed significantly and the new classification is a higher pay grade was warranted. The Clinical Laboratory Technician classification was already part of the employer's campus-wide classification plan and, previous to 2003 had only been used at the University of Washington Medical Center, where they were unrepresented until 2004.. The employer did this reclassification pursuant to language in the parties' collective bargaining agreement in effect at that time and that has remained in effect through two successive, successor collective bargaining agreements.

ARTICLE 47 – ALLOCATION/REALLOCATION

47.1 Policy. The employer will allocate positions on a "best fit" basis to the most appropriate classification at the University of Washington. Allocations shall be based on a position's duties, responsibilities, or qualifications.

Reallocations shall be based on a permanent and substantive change in the duties, responsibilities, or qualification of a position or application of the professional exemption criteria set forth in RCW 41.06.070(2). The University will notify the Union of any proposed reallocations of occupied bargaining unit positions into non-bargaining unit positions.

Disputes regarding professional exemptions shall be resolved by the Washington Personnel Resources Board in accordance with WAC 357-52-010(4). Disputes regarding allocation and reallocation within the bargaining unit shall be resolved through the Review and Appeal processes set forth below and are not subject to Article 24 Grievance Procedure.

As a result of this reclassification the affected employees received an immediate increase in pay as they had been moved to a higher pay classification. Initially, that new classification, Clinical Laboratory Technician, was a non-represented position.

- On October 10, 2003, the union filed a complaint charging unfair labor practices against the employer wherein it alleged that the employer had refused to bargain the change in the employees' pay and the change in their bargaining unit status.

- On June 15, 2004, the Commission certified the Service Employees International, Local 925 (SEIU), as the bargaining representative of:

> All full-time and regular part-time unrepresented non-supervisory laboratory technical employees employed by the University of Washington in hospitals and clinics operated by the University of Washington, excluding confidential employees, supervisors, internal auditors, and employees in other bargaining units.

- On March 2, 2005, the examiner issued a decision on the union's complaint and found that that the employer had committed an unfair labor practice. She ordered the employer to restore the *status quo ante* by returning the work of the central processing technicians from the SEIU unit to the union. *University of Washington,* Decision 8878 (PSRA, 2005) *aff'd University of Washington*, Decision 8878-A (PSRA, 2006).

- On October 18, 2006, the employer's Executive Director of Labor Relations, Lou Pisano, wrote the union's Senior Field Representative, David Clayborn confirming that the parties had been in settlement discussions concerning the ULP charges and had reached settlement which included not reclassifying the Specimen Processing Technicians to Clinical Laboratory Technicians in the SEIU bargaining unit. However, this proported "settlement" was never confirmed by the union.

- On February 20, 2007, the Assistant Attorney General representing the employer, Jeffrey Davis, wrote the union's attorney, Edward Younglove. He described the situation concerning several positions in the union's bargaining unit, including the Unit Supply

Technicians, Custodian Leads, and the Specimen Processing Technicians. He proposed, among other things, that the employees be reclassified as Clinical Laboratory Technicians and that they be moved to the SEIU bargaining unit. He offered to have further discussion on the issues if that would have been useful.

- On February 22, 2007, Younglove e-mailed Davis that the union agreed to two of the employer's proposals on employee placement (Unit Supply Technicians and Custodian Leads). It did not agree to the employer's proposal on the Specimen Processing Technicians. He proposed that the Harborview Clinical Laboratory Technicians be restored to their original classification as ordered by the Commission, but that they would be Y-rated so that their wages would remain the same as they were under the CLT classification.

- On February 26, 2007, Davis e-mailed Younglove with more details concerning their tentative agreement. He stated that the employer would agree to Y-rate the Specimen Processing Technicians as proposed by the union.

- On April 23, 2007, Elizabeth Turnbow, the union's field representative, wrote the employer and proposed that it create a job classification of Clinical Laboratory Technician Harborview Medical Center, which would be included in the union's bargaining unit. She proposed that the new classification be paid the same as the Clinical Laboratory Technicians at the University Medical Center and placed on the same pay scale they had been on prior to the 2003 PERC ordered reclassification.

- On May 9, 2007, Turnbow and Lindsay Bruce, both union field staff, jointly wrote Pisano and, among other positions, stated the following:

> The Specimen Processing Technicians: We are requesting the Specimen Processing Technicians to be assigned to the proper pay scale and proper name of HMC Clinical Laboratory Technicians. Our expectations are for you to follow the direction set forth in our previous letter.

This proposal became the consistent position of the union throughout the remainder of the correspondence between the parties.

- On June 18, 2007, Pisano wrote Bruce that the employer had reclassified the employees back to their original classifications of Specimen Processing Technician in the union's bargaining unit. He also indicated that the employer was "re-evaluating the work performed by this class to determine if they are properly classified."

- On July 27, 2007, Pisano wrote both Bruce and the SEIU the following:

> PERC's decision places the University in the unenviable position of having employees who are performing equivalent work, in two different union and being paid on two different payscales. As a consequence, there are the predictable morale issues amongst the employees. The University would prefer that the employees be covered by one union or the other. I am writing to ask whether both unions could discuss this issue with each other and advise me if this is a possibility.

- On October 4, 2007, Pisano again wrote Bruce again and informed him that that the employer was contemplating reclassification of the Specimen Processing Technicians and Specimen Processing Technician Leads in the union's bargaining unit and the Clinical Laboratory Tech 2 classification in the SEIU bargaining unit as the work for all three classes had become more complex. He referenced Article 47 of the parties' collective bargaining agreement (as quoted above).

- On October 10, 2007, Bruce replied stating that the union was not in agreement with what the employer was "contemplating." He proposed that "we would like to meet and confer with your office." He stated that it appears that there again is a skimming issue and that the union would like to avoid problems that the parties had had with other issues.

- On November 10, 2007, the union received a petition from a number of the affected Specimen Processing Technicians asserting that the union had caused them to not receive the same pay increase that had been granted to the Clinical Laboratory Techs at the University Medical Center.

- On November 11, 2007, Bruce e-mailed Pisano and asked to set up a meeting to discuss the union's proposal. He closed with "[s]o let's see if we can get together and get them their pay."

- On November 19, 2007, the union wrote Pisano and proposed that the employer classify the Specimen Processing Technicians as Clinical Lab Technicians with their own job code to differentiate them from the other Clinical Lab Technicians working at the University Medical Center. Part of this solution would be to pay the newly reclassified employees the same pay as the existing Clinical Laboratory Technician classification. In the union's opinion this arrangement would allow the employer to "continue to 'swap' employees" to manage temporary workload increases at both medical centers. This proposal would keep the reclassified employees at Harborview in the union's bargaining unit and is the position that the union maintained thereafter.

- On November 27, 2007, Bruce e-mailed Pisano the following:

  We need to set up a meeting to try and resolve this issue once and for all.

  We believe these people should be paid the same rate of pay as the Clinical Lab Techs and should be classified as Harborview Clinical Lab Techs with a different job code number that (sic) the Clinical Lab Techs at UMMC. This would allow them to continue their work as it is currently being done.

- On November 27, 2007, Piano replied by letter as follows:

  The University is not willing to accept your proposal as it perpetuates the concept of having employees performing similar work in different job titles, pay scales and unions, which is not a best practice for the Medical Centers. I can assure you that favoring one union over another does not factor into this analysis.

  As you know the University complied with the PERC Order and restored the employees subject to that case to the classification of Specimen Processing Techs in the WFSE. Subsequently the University, by letter dated October 4, 2007 (attached), proposed again that these employees be reclassified as Clinical Lab Techs in SEIU as it believes that the most efficient and practical way to run the labs at both Medical centers is with one classification and one union (CLT's/SEIU). You advised me that the union could not accept this proposal.

  If the Union has any creative solution consistent with the interests of the University as described above, I would be happy to schedule a meeting and discuss (sic) with you.

- On January 18, 2008, Pisano wrote Bruce and said;

  I am writing to inquire whether the union was willing to discuss other options that may result in something different from what is currently the status quo or whether

there is any interest in exploring other creative alternatives. My current concern is if we continue to have the same positional dialogue we will end up in the same place.

- On January 24, 2008, another union representative, Phyllis Naiad, responded and made a formal request to bargain the issue. She included dates in February that she was available.

- On February 22, 2008, Pisano and Naiad began an e-mail series in which the union reiterated its consistent proposal. This included "what if" scenarios proposed by Pisano in which he asked for concessions from the union concerning the long standing issue of window washers at Harborview or a "no pyramiding of OT" clause in the collective bargaining agreement in exchange for the employer moving on the Specimen Processing Technicians. In a February 27, 2008 letter, Naiad asked to schedule a meeting on the "Clinical Lab Techs."

- Also on February 27, 2008, a group that identified themselves as the HMC SPT Group/Laboratory/Medicine wrote the employer's Office of Labor Relations. The group alleged that they were: "being held hostage by the current classification dispute between WFSE and UWMC administration." They further stated that "for over one year, 35 HMC SPS employees have been left behind by the reclassification." The "left behind" phrase referred to the fact that their classification had been "Y-rated." Finally, they stated that they would accept: "nothing less than reclassification as CLT's and back pay to reflect the salary adjustment." The letter concluded with a list of 32 employees with dated signatures.

- Pisano replied to Naiad on March 6, 2008, and stated that the employer believed that it had fully complied with the Commission's order and had no legal obligation to bargain the classification issue, but he did agree to meet with her. He added: "In my letter (January 18, 2008) I also advised Mr. Bruce that if we continue with the same positional dialogue we will end up in the same place." He asked her to contact him to set up the meeting.

- On May 28, 2008, Beth Terrell, an attorney hired by some of the employees in the Specimen Processing Technician classification advised the employer that she represents a group of laboratory technicians who work at Harborview Medical Center. Pisano advised Terrell that

he would be happy to meet with her as long as Naiad agreed to attend. The employer immediately advised the union of this contact.

- On June 4, 2008, Naiad wrote Pisano and repeated her demand to bargain on this issue. She added that the union had no intention of meeting with a third party on this issue (referring to Terrell's meeting request to Pisano).

- On June 5, 2008, Pisano replied and indicated that he had offered to meet to discuss this matter on several occasions but had not received any response from the union. He offered two dates in June when he would be available.

- The parties did meet on June 19, 2008. Following that meeting, on June 26, 2008, Naiad wrote Pisano and set forth her proposal to settle the issue. She reiterated the same consistent proposal for moving the Specimen Processing Technicians to the Clinical Laboratory Technician class and restoring their pay to the pre-Commission ordered reclassification and the elimination of any "red-lining or Y-rating.

- On July 15, 2008, Pisano, Terrell, another employer representative and two of the Specimen Processing Technicians met. Naiad did not attend although both Pisano and Terrell had advised her of the meeting and Terrell had included Naiad in her e-mail correspondence when she was scheduling the meeting. Terrell testified that Pisano did not offer any recommendations, but only gave the parties at the meeting the historical background of the issue. She also testified that he did not advise the employees concerning what they could or could not do for themselves. She also stated that she had understood that it was Pisano's position that a condition of the meeting was that Naiad would attend.

- On July 31, 2008, Pisano wrote:

> As you know, the proposal you offer in your letter has been offered by the Union on several occasions over the last year and has not been accepted by the University. As the University maintains the position (letter to Lindsay Bruce dated October 4, 2007) that this work should be reallocated to SEIU Local 925, it is unwilling to accept your offer.

> The Union has made it very clear that it will not accept the reclassification of this work as proposed in the University's letter dated October 4, 2007.
>
> At this point in time the University believes the best approach to handle this situation is to file a unit clarification with the PERC. It is our hope that the Union will join the University in this filing before the PERC. Please advise me if you concur with this approach or if you would like to discuss this issue further.

- The employer filed a unit clarification petition with the Commission on November 3, 2008. On preliminary review it was dismissed as untimely.

CONCLUSIONS

Duty to Bargain

The first question to be answered in this case is whether or not the employer had a duty to bargain the placement of certain classifications in its salary grid. As discussed above, the duty to bargain is applicable to an employer's decision on a mandatory subject of bargaining and the effects of that decision, but will be applicable only to the effects of a managerial decision on a permissive subject of bargaining. *Skagit County*, Decision 6348 (PECB, 1998). Concerning permissive subjects of bargaining, the parties in a collective bargaining relationship may bargain such issues, but are not required to do so. Any employer, but most certainly one of the largest employers of health care employees in the region, has an overriding entrepreneurial interest regarding what kinds of services are delivered, what kinds of classifications are hired, and how they are placed within its classification system to perform those services. Such issues certainly affect employee wages, but such issues have an even greater affect in determining what services the employer is able to deliver and where and how they will be delivered. To that end, this employer has developed a complex classification system with its own standards and rules. That system is exemplified by the testimony concerning the classification and compensation study that made the initial determination that the Specimen Processing Technicians should be reclassified as Clinical Laboratory Technicians in 2003.

Because the placement of the Specimen Processing Technicians in its classification system is a permissive subject of bargaining, the employer did not have a duty to bargain this issue. But it is

clear from the correspondence between the parties over a long period of time; the employer was willing to bargain. Having so decided, it is obligated to bargain in good faith with the union.

Bargaining in Good Faith

Also based upon the preceding correspondence between the parties, the union argues that the employer refused to bargain. It asserts that the employer steadfastly refused to consider any solution to the issue of the Specimen Processing Technicians other than moving the employees to the existing classification and that it encouraged the employees to pressure their union to agree to its proposal.

However, I view the course of conduct between the parties differently. Over a lengthy period of time the employer and the union did in fact negotiate concerning this issue, but it is clear that both sides remained adamant about their respective positions. It is true that, although both sides frequently requested meetings, neither seemed terribly responsive to the suggestion. They finally did meet on June 18, 2008, but it is evident that the parties only continued to put forward the same positions and that neither side was willing to compromise. Furthermore, it is also clear from the correspondence, particularly when Davis and Youngblood were involved in the earlier correspondence, that the parties were perfectly capable of resolving issues by correspondence, without a face to face meeting. But on this issue, both sides engaged in hard, positional bargaining. But this hard bargaining does not constitute a refusal to bargain. Indeed, the statute governing the bargaining of these parties explicitly states:

> RCW 41.80.005(2) . . . The obligation to bargain does not compel either party to agree to a proposal or to made a concession, except as otherwise provided in this chapter.

In this case, the employer did engage in hard and protracted bargaining, but in doing so did not refuse to bargain and did not commit an unfair labor practice.

Interference

The union also alleges that the employer encouraged members of its bargaining unit to pressure the union to agree to the employer's proposal to move the Harborview technicians into the SEIU bargaining unit. The only evidence of this pressure was the allegation that the employees had

attached a copy of an October 19, 2007 union letter to the employer, to their petition. The letter was stamped as having been received by the employer's labor relations office. However, the content of the letter does not prove any intent to "add fuel to the fire." The letter merely states that the union was requesting to meet concerning the employer's proposal to move the Specimen Processing Technicians to the Clinical Laboratory Technician classification in the SEIU bargaining unit. By February 27, 2008, the date of the employee's petition, it should have been no surprise what the respective positions of both sides were. Nothing in the letter encourages the employees to seek other representation or to petition the parties, because it's the union's letter that was included with the petition. Furthermore, the letter was dated October 10, 2007, and the employee's petition was dated November 11, 2007, both more than six months prior to the April 30, 2008, date of the original complaint. Neither document can thus be the basis for a finding of an unfair labor practice as they are outside the purview of the statute. RCW 41.80.120. And finally, Mathew Vengalil, the Specimen Processing Technician who testified that he authored and sent the petition to the union concerning this issue, also testified that he had not included the October 10 letter with his petition. Vengalil stated that he had only mailed the cover letter and the signature list.

And while it is true that Pisano admitted that he had had several contacts with the employees impacted by this classification issue, he described these conversations as him listening and the caller yelling. There was no testimony that disputed this description, nor was there testimony that Pisano instigated these calls. It is not surprising that Pisano took calls from employees and listened to their complaints, nor is it an interference with the rights of the employee's bargaining representative.

The union did not present sufficient evidence that the employer did anything to pressure the union to change its position and therefore the change of interference in the affairs of the bargaining representative must be dismissed.

ISSUE 2 – Did the employer interfere with employee rights in violation of RCW 41.80.110(1)(a) and refuse to bargain with the union in violation of RCW 41.80.110(1)(e), by dealing directly with represented employees concerning the salary and classification of Specimen Processing Technicians?

APPLICABLE LEGAL STANDARD

The Commission generally finds that any employer refusal to bargain violation under RCW 41.56.140(4) inherently interferes with the rights of bargaining unit employees and thus routinely finds a derivative interference violation under RCW 41.56.140(1). *Skagit County*, Decision 8746-A (PECB, 2006). Therefore, an employer violates RCW 41.56.140(1) and (4) if it implements a unilateral change on a mandatory subject of bargaining without having fulfilled its bargaining obligation.

A particular form of employer interference with the rights of organized employees is circumvention or direct dealing. As was described in *Centralia School District,* Decision 2757 (PECB, 1987), an employer has a duty to bargain with the exclusive bargaining representative selected by its organized employees. It is not allowed to deal directly with its employees concerning mandatory subjects of bargaining or matters covered by the parties' collective bargaining agreement. In *City of Seattle*, Decision 3566-A (PECB, 1991) the Commission stated:

> Where employees have exercised their right to organize for the purposes of collective bargaining, their employer is obligated to deal only with the designated exclusive bargaining representative on matters of wages, hours and working conditions. RCW 41.56.100; RCW 41.56.030 (4). Under such circumstances, an employer may not seek to circumvent the exclusive bargaining representative of its employees through direct communications with bargaining unit employees.

That standard was more recently reaffirmed in *Whatcom County*, Decision 7244-A (PECB, 2003).

ANALYSIS

The union amended its complaint on September 24, 2008, to allege that the July 15, 2008 meeting with Terrell and two Specimen Processing Technicians as described above constituted direct dealing, circumvention, and interference with the union's bargaining rights. However, the evidence does not support this claim. The union's witness, Mathew Vengalil, the originator of

the employee's petition to the union, attended the meeting with another employee. Vengalil testified that they:

> [D]idn't have too much to talk about because your party or our Union people did not show up. So that there is nothing to talk about except that we told our frustration . . . about being unfairly treated by the University and the Union because nobody is, you know, giving us any kind time of their life to listen to us, other than who is right, who is wrong. You know, we don't really need to get into the technicalities of why or how it happened. We are not interested in that. . . . We said we need our classification back, we need our pay back, we need our back pay, we need everything restored to where they were supposed to be.

And he concluded his testimony by saying:

> They said they have to work through the system, whatever it takes. They give it to PERC, this is up to the PERC to decide that now. That's what they told us.

In his last remarks Vengalil was referring to a unit clarification petition that the employer had filed concerning this issue. The petition was dismissed on the issue of timeliness. *University of Washington*, Decision 10263 (PSRA, 2008).

CONCLUSION

The meeting on July 15, 2008, was requested by the employee's attorney and the employer immediately notified the union of the contact and attempted to include the union in the meeting. Three of four people at the meeting testified as to the content of the meeting, including Vengalil's account. None of the testimony provided any proof that the employer was in any way attempting to circumvent the union. This allegation of interference and circumvention must be dismissed.

FINDINGS OF FACT

1. The University of Washington is a state institution of higher education within the meaning of Chapters 41.06 and 41.80 RCW and as a part of its functions, operates and staffs an acute care hospital and regional trauma center at Harborview Medical Center and a regional medical center at University Hospital.

2. The Washington Federation of State Employees, an employee organization within the meaning of Chapter 41.80 RCW, is the exclusive bargaining representative of "all classified staff employees of the University of Washington performing work at the Harborview Medical Center in the classifications" including, but not limited to: the Specimen Processing Technicians.

3. In 2003, the employer, using specific language in the parties' collective bargaining agreement, reclassified Specimen Processing Technicians represented by the union and working at Harborview Hospital as Clinical Laboratory Technicians. The employer had determined that the responsibilities of the Specimen Processing Technicians were comparable to that of the Clinical Laboratory Technicians working at the employer's University Medical Center. The Clinical Laboratory Technicians at the University Medical Center were paid at a higher pay scale than were the Specimen Processing Technicians at Harborview.

4. On October 10, 2003, the union filed a complaint charging unfair labor practices against the employer for skimming the work of the Harborview Clinical Laboratory Technicians out of its bargaining unit.

5. On June 15, 2004, Service Employees International, Local 925 (SEIU), was certified as the exclusive bargaining representative of:

> All full-time and regular part-time unrepresented non-supervisory laboratory technical employees employed by the University of Washington in hospitals and clinics operated by the University of Washington, excluding confidential employees, supervisors, internal auditors, and employees in other bargaining units.

6. On March 2, 2005, the examiner issued her decision on the union's charge of unfair labor practices. She found that the employer had skimmed bargaining unit work from the union and ordered that the *status quo ante* be restored by the return of the laboratory work done by the technicians at Harborview to the union's bargaining unit. The decision was appealed and the Commission affirmed the decision on September 5, 2006.

7. Subsequent to the examiner's decision on the union's charges of unfair labor practices, the parties engaged in several years of correspondence concerning the parties' interests in paying the now-reclassified Specimen Processing Technicians on the same pay scale as the Clinical Laboratory Technicians. The union, however, wanted the work to remain in its bargaining unit, while the employer was concerned that if it reclassified the employees it would again be faced with a skimming charge, this time by SEIU.

8. During the course of this negotiation the parties did agree that the affected employees at Harborview would be Y-rated, that is, they would continue to be paid at the higher rate of pay, but their pay would stay at that rate until the rate paid the classification of Specimen Processing Technician equaled what the existing employees were being paid. The negotiations included a request by the employer that the two unions involved meet and discuss this issue. Such a meeting did not take place.

9. On November 10, 2007, the union received a petition from a number of the affected Specimen Processing Technicians at Harborview Medical Center, asserting that the union had caused them to not receive the pay increases that had been received by the Clinical Laboratory Technicians at the University Medical Center. The union alleged that the employees had included a copy of a letter from the union to the employer along with the petition, but the author of the petition testified that he had not seen the letter before and had not included it with the petition.

10. On May 28, 2008, a group of the affected Harborview Specimen Processing Technicians and their private attorney requested a meeting with the employer. The employer immediately notified the union and requested its presence at such a meeting. The union wrote the employer and stated that they had no intention of meeting with a third party.

11. The above-referenced meeting took place on July 15, 2008, when the employer's representative met with two of the Specimen Processing Technicians and their attorney. According to the testimony of the employer's representative, one of the employees present at the meeting, and the employee's attorney, the history of the issue was presented and the employees presented their position, but nothing that could be characterized as negotiations took place at this meeting.

CONCLUSIONS OF LAW

1. The Public Employment Relations Commission has jurisdiction in this matter under Chapters 41.06 and 41.80 RCW and Chapter 391-45 WAC.

2. The issue of employee placement in a classification system is a permissive subject of bargaining under RCW 41.80.020(1).

3. By its actions and communications between the employer and the union described in the Findings of Fact, the employer bargained in good faith and did not commit an unfair labor practice in violation of RCW 41.80.110(1)(e).

4. By its actions and the communications described above, the employer did not interfere with the rights of its organized employees in violation of RCW 41.80.110(1)(a).

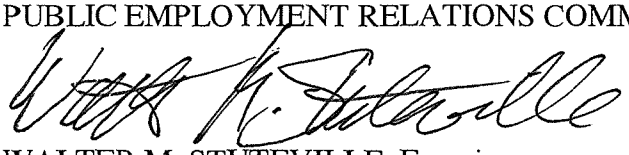
5. By its actions and communications described above, the employer did not circumvent the collective bargaining rights of the union in violation of RCW 41.80.110(1)(e).

ORDER

The complaint charging unfair labor practices in the above-captioned matter is hereby dismissed.

ISSUED at Olympia, Washington, this 17th day of September, 2010.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



WALTER M. STUTEVILLE, Examiner

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.

PUBLIC EMPLOYMENT RELATIONS COMMISSION

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PUBLIC EMPLOYMENT RELATIONS COMMISSION

BY /S/ ROBBIE DUFFIELD

CASE NUMBER:	21681-U-08-05529	FILED:	04/30/2008	FILED BY:	PARTY 2
DISPUTE:	ER MULTIPLE ULP				
BAR UNIT:	MISCELLANEOUS				
DETAILS:	See Case 1794U044627				
COMMENTS:					

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